

Survey response	
Please indicate: [State:]	Republic of Korea
Please indicate: [Region:]	East Asia
Please indicate: [Affiliation:]	Court/Judiciary
Please indicate your profession:	Judge
Do you have practical expertise in cross-border civil or commercial litigation:	Yes
Press "Next" to continue	
1.1 What are your views on the scope of the Draft Text?	In general, I believe the scope of the Draft Text is well structured. Alignment with the scope of the 2019 Judgment Convention is also important, as issues of recognition & enforcement are inseparable from lis pendens issues. In this respect, the current scope appears to be harmonized with that of the 2019 Judgment Convention. Additionally, from my understanding, the question of whether the future Convention should take the form of a protocol to the 2019 Judgment Convention remains valid, and is expected to be discussed in a later stage, should such discussions take place. Regarding the geographical scope, the current Art. 1(2) appears unduly restrict the scope of the future Convention. In my view, it would be sufficient to exclude purely domestic cases.
1.2 Does the subject matter scope of the Draft Text cover those matters for which rules on parallel proceedings and related actions would be beneficial?	From a general perspective, I am positive about the scope of the Draft Text. The exclusions are based on reasonable grounds, and, as noted above, alignment with the 2019 Judgment Convention is important. The subject matter covered by the Draft Text would contribute to resolving a meaningful number of cases involving parallel proceedings and related actions.
1.3 What are your views on the subject matter exclusions in particular, and how they would work in practice? For example, what are your views on the formulation of the arbitration exclusion in Article 2(3)?	I would like to make a brief comment on the issue of terrorism. Although I do not have sufficient background information on this issue, as referred to in the note, I have some concerns about including text addressing this matter. Incorporating this subject matter into the list of exclusions may give the future Convention a “political” appearance, potentially making it less attractive and less persuasive.
1.4 What are your views on the geographical scope of the Draft Text and how it would	

<p>work in practice? (See paragraph 16 for further information).</p>	
<p>2. What are your views on the definitions of parallel proceedings and related actions? In particular, please share your views on how these definitions might operate, and be applied by parties and courts, in practice.</p>	<p>Determining whether the “subject matter” is the same across multiple proceedings is not straightforward, and it can be controversial even in purely domestic cases. Given that the concept of “subject matter” is not clearly understood by some States—particularly non-English-speaking States or those that adopt procedural concepts different from that of “subject matter”—its use may cause considerable confusion for judges. That said, this difficulty may arise regardless of the terminology employed. Therefore, I believe that more in-depth research should be undertaken on this issue, and that detailed guidance should be provided through the Explanatory Report or other relevant sources. With regard to the definition of related actions, it is true that the boundary is relatively vague and that the precise scope of what constitutes “related actions” will largely depend on domestic law or judicial discretion. However, in light of the discretionary mechanism provided for in Chapter III, I do not believe that the definition itself will give rise to significant problems. That said, as I will elaborate later, the mechanism set out in Chapter III lacks legal clarity to a serious degree, which, in my view, renders that mechanism impractical.</p>
<p>3. What are your views on Article 4?</p>	<p>The Consultation paper provided by the PB states that "sub-paragraph (b) applies to Contracting States where the service of the claim by the plaintiff upon the defendant represents the formal commencement of proceedings". In the Republic of Korea, the filing of a document precedes its service on the defendant. However, the formal commencement of proceedings occurs only when the document is validly transmitted to the defendant. In this respect, it is unclear whether sub-paragraph (a) or sub-paragraph (b) would apply in such a case. I believe that this point should be clarified in order to prevent practical confusion.</p>
<p>4. What are your views on Article 5?</p>	<p>The Article 5 does not imply serious practical problems, while further discussion on the issues of recognition and enforcement must be</p>

	<p>taken place for the integrity of the future Convention. Meanwhile, the necessity of Article 5 remains open to question. In my view, certain aspects of this article overlap with other provisions, while the remaining elements could be adequately addressed by Articles 6 through 10.</p>
<p>5. What are your views on Articles 6 – 8 including how they will work in practice?</p>	<p>Although Articles 6 and 7 still contain a few pending issues to be resolved at a later stage, they appear to be well structured and to reflect general legal doctrines or common features of domestic legal systems. These “pending issues” are largely technical in nature and do not require political decision-making. At the same time, I take a positive view of these provisions. With regard to Article 8, I consider its logical structure to be clear and reasonable. One of the key issues concerns paragraph 2, which addresses the jurisdictional grounds. Each subparagraph provides a reasonable basis for establishing jurisdiction. Nevertheless, it will be important to determine to what extent—and in how many jurisdictions—these factors may be acceptable, particularly in light of domestic rules on jurisdiction in each country. At least, the provision appears to be generally consistent with the relevant rules of Korea.</p>
<p>6.1 What are your views on the ‘jurisdiction / connection’ list in Article 8(2)?</p>	
<p>6.2 Based on your experience, do you consider these factors appropriate for parallel proceedings i.e. for obliging courts to suspend or dismiss proceedings if they are not seised on the basis of one of these? Why or why not?</p>	
<p>6.3 Are there any additional factors that you believe should be included?</p>	<p>I wonder whether it would be possible to incorporate certain provisions that confer discretion on domestic courts. For example, where parallel proceedings are pending before the courts of State A, and State A applies a jurisdictional rule different from that set out in Article 8(2) of the Draft Text, it may be considered whether the court of State A could nonetheless be regarded as having jurisdiction or a sufficient connection under Article 8(2), provided that the courts of the other States involved in the parallel proceedings determine that the relevant jurisdictional ground applied</p>

	<p>by State A is reasonable and equivalent to those listed in Article 8(2). I am aware of the potential side effects of this suggestion. Nevertheless, I believe that it merits discussion, at least at a conceptual level. If Article 8(2) is intended to operate as an exhaustive list, it would, in theory, need to cover all possible jurisdictional factors. Given the diversity of domestic legal systems and the wide range of potential cases, however, such comprehensive coverage appears unrealistic. In practice, when judges are confronted with such cases, they may seek to interpret the provision more broadly, or to treat it as directory or guiding in nature, in order to reach a reasonable outcome. From this perspective, an overly restrictive approach may lead to a negative reception of the article by domestic courts or result in interpretive fragmentation during its implementation.</p>
<p>7.1 What are your views on the approaches proposed in Article 9 for determining which court should adjudicate the dispute in cases of parallel proceedings which Articles 6 – 8 have not resolved?</p>	
<p>7.2 What are your views on how the two approaches may work in practice?</p>	
<p>7.3 Do you have a preference for either approach? If so, please explain why.</p>	
<p>8.1 What are your views on the factors listed in Article 10 for determining the more appropriate court in cases of parallel proceedings subject to Article 9 (i.e. that are not resolved by Articles 6 – 8)?</p>	<p>Overall, Article 10 sets out reasonable factors to be considered in determining the more appropriate court. From my perspective, sub-paragraph (c) appears to be the most controversial. I do not hold a strong view on whether this factor should be retained. However, when considering situations involving parallel proceedings in which this factor would need to be taken into account, it does not seem easy or straightforward to assess the applicable law in the context of Article 9. Accordingly, if this sub-paragraph is to be retained, further discussion of its details would be necessary, and clear guidance should be provided through the Explanatory Report or other relevant materials.</p>
<p>8.2 Do you have any views on how Article 10 might work in practice?</p>	<p>I see no reason to believe that Article 10 would fail to operate effectively in practice.</p>
<p>8.3 Are there additional considerations that, in your view, should be taken into account?</p>	

<p>9. Do you have an overall view on the effectiveness of the framework developed in the Draft Text for dealing with parallel proceedings in an international context? Please explain any advantages and / or disadvantages of the framework, and how you think it will work in practice.</p>	
<p>10. Do you have a view on the effectiveness of the framework developed in the Draft Text for dealing with related actions in an international context? Please explain any advantages or disadvantages of the framework, and how you think it will work in practice.</p>	<p>I regret having to express this critical view, but I consider the current mechanism for related actions to be impractical, or at best, workable only in limited regional contexts or in very narrow categories of cases. Chapter III appears to envisage the resolution of related actions through “adjudication by a single court.” However, it remains excessively unclear what is meant by “adjudication by a single court.” For such adjudication to occur, all or part of the related actions would need to be concentrated before that court. Yet, the current provisions remain silent on the most fundamental question, namely, how such concentration is to be achieved. Unlike cases involving parallel proceedings, related actions cannot be resolved by simply removing or staying other proceedings, as each action is distinct in nature and must ultimately reach its own conclusion. This implies that each case requires a separate resolution. In this context, it is insufficient for one court merely to render a decision on common issues arising in one of the related actions. Courts are required to address all issues in each case, and in most instances, such determinations must take the form of judgments. Accordingly, a procedural framework that enables a single court to render judgments in all related actions is of critical importance. Not only do the current provisions fail to address this issue, but they also appear not to have considered other procedural matters that would inevitably arise, such as the admissibility of evidence, the allocation of procedural costs, or the appointment of counsel. If the “suspension” mechanism under the current provisions on related actions is not intended to presuppose the issuance of a single judgment by one court, but rather to enable other courts to resume their proceedings and render consistent judgments in accordance with the judgment of a single court, this intention should be articulated more clearly.</p>

<p>11.1 What are your views on the practical operation (or the effectiveness) of the communication methods set out in Chapter IV of the draft text for use between courts seised, in cases involving parallel proceedings and related actions?</p>	<p>The concept of a communication mechanism is invaluable, and Article 16 provides an appropriate means of implementing this concept. Given that the four methods of communication, as well as the default mechanism, are well structured, the communication mechanism appears to be feasible in principle. However, I would like to emphasize the importance of swiftness. As far as I am aware, partial or informal communications between judiciaries sometimes take place in the course of implementing HCCH Conventions, such as the 1965 Service Convention or the 1970 Evidence Convention, and it is not uncommon for even simple communications to take several months. Such delays may arise for various reasons, and technical issues—such as translation or internal communication within the judiciary (for example, between the central authority and the judge directly handling the case)—are not the only factors involved. When judiciaries communicate with external entities, they tend to exercise an especially high degree of caution. As a result, in practice, the time required to complete such communications may be significantly longer than expected. In such cases, the feasibility of the communication mechanism would be substantially undermined. In this respect, Article 16 should take the need for swiftness into account.</p>
<p>11.2 Are there particular advantages and challenges you foresee in applying these methods?</p>	
<p>12. What are your views on the three safeguards provided in the Draft Text (Articles 19-21), particularly as to how they will operate in practice?</p>	
<p>13.1 Would the rules set out in the Draft Text achieve the objectives of a future instrument? The objective of a future instrument is to enhance legal certainty, predictability and access to justice by reducing litigation costs, and to mitigate inconsistent judgments in transnational litigation in civil or commercial matters.</p>	

13.2 Do you have any views on whether the proposed rules set out in the Draft Text would improve the status quo?	
13.3 Do you consider there are any risks of tactical or satellite litigation arising from any of the provisions, or the overall approach of the Draft Text? Are these risks greater or fewer than those that currently exist? Are there any ways that such risks could be addressed in the Draft Text?	
14. What other comments, if any, do you have?	